

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

DANIEL BRYAN KELLY,)
Plaintiff,)
vs.)
RICKY OWENS, et al.,)
Defendants.)
CIVIL ACTION NO.: 2:05CV1150-M

**DEFENDANT AL BRADLEY, TERRY WILSON, AND WENDY ROBERSON'S
MOTION TO DISMISS CLAIMS AGAINST THEM IN THEIR OFFICIAL
CAPACITIES**

COME NOW, Al Bradley, Terry Wilson, and Wendy Roberson, Defendants in the above-styled action, and move this Court to dismiss the Plaintiff's claims against them in their official capacities, pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted. As grounds therefore, the Defendants state as follows:

1. The Plaintiff filed his Complaint on December 6, 2005, alleging violations of his Eighth and Fourteenth Amendment Rights pursuant to 42 U.S.C. §1983. The Plaintiff's lawsuit names these Defendants in their official, as well as individual capacities.

2. The Plaintiff's claims against Defendants Al Bradley, Terry Wilson, and Wendy Roberson are due to be dismissed for lack of subject matter jurisdiction.

(a) All official capacity claims under 42 U.S.C. §1983 against these Defendants are due to be dismissed due to lack of subject matter jurisdiction pursuant to the Eleventh Amendment to the United States Constitution.

(b) Further such official capacity claims are due to be dismissed for failure to state a claim upon which relief can be granted as these Defendants are sued in their official

capacities, are not "persons" for purposes of 42 U.S.C. §1983.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Defendants Al Bradley, Terry Wilson, and Wendy Roberson move this court to dismiss the claims made against them in their official capacities for failure to state a claim upon which relief can be granted and grant unto them costs and attorney's fees pursuant to 42 U.S.C. §1983.

Respectfully Submitted this the 25th day of January, 2006.

/s/ Kristi A. Dowdy
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CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of January, 2006, I did electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of said filing to the following CM/ECF participants:

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/s/ Kristi A. Dowdy
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